

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X STEVE SANDS,

THE BUFFALO NEWS, INC.,

USDC SDNY
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DOC #: _____
DATE FILED: 1/11/18

: Plaintiff, :
: : 17-CV-4265 (VEC)

: -against- :
: :
: Defendant. :
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ORDER

VALERIE CAPRONI, District Judge:

WHEREAS on November 16, 2017, the Court ordered the Defendant to show cause why default judgment should not be entered in this case, and to respond to the Order by December 6, 2017 [Dkt. 18];

WHEREAS Defendant responded to the Court's Order on December 6, 2017 and, in its filing, put forward evidence through sworn statements that Plaintiff's counsel, Richard Liebowitz, after his firm withdrew a meritless suit against Defendant, and after Mr. Liebowitz ignored Defendant's efforts to discuss settlement in the immediate case, claimed to have sent emails to Defendant "over many months" before he moved for default judgment in November 2017, and forwarded a string of three email messages purportedly sent during that intervening period whose authenticity could not be verified by Defendant's technology staff or a third-party forensic consultant [Dkts 23-1, 23-2, 23-3, 23-4, 23-5]; and

WHEREAS 28 U.S.C. § 1927 provides that "[a]ny attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy

personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct;

WHEREAS the Court, on December 11, 2017, ordered Mr. Liebowitz show cause, by letter dated no later than December 19, 2017, why he should not be personally sanctioned pursuant to 28 U.S.C. § 1927 and the Court's inherent powers for a lack of candor with his adversary that contributed to unnecessary litigation before the Court, as well as inform the Court of all instances of his being sanctioned, or warnings that he will be sanctioned, in this District [Dkt. 31];

WHEREAS Mr. Liebowitz responded to the Court's order on December 19, 2017, defending his conduct in this matter and asserting, *inter alia*, that he is "100% certain" that he sent the three emails in question, attaching documents purported to be the three emails [Dkts. 33, 34, 34-1, 34-2, 34-3, 34-4];

WHEREAS the Court, on December 28, 2017, ordered Defendant to respond to Mr. Liebowitz's submission by January 12, 2018 [Dkt. 35]; and

WHEREAS Defendant responded to the Court's order on January 11, 2018, raising, *inter alia*, questions of the legitimacy of the three emails as presented by Mr. Liebowitz to the Court, and questioning Mr. Liebowitz's failure to respond to Defendant's previous request to send electronic copies of the three emails for analysis [Dkts. 36, 37];

IT IS HEREBY ORDERED that Mr. Liebowitz electronically send, by close of business on January 15, 2018, the three emails in question (June 13, 2017 at 1:33 P.M., July 12, 2017 at 1:31 A.M., and September 14, 2017 at 3:08 A.M.) to Defendant as individual attachments with all metadata retained such that Defendant may have its third-party forensic consultant analyze the files. It appears that Defendant has previously provided instructions to Mr. Liebowitz as to how to do so [Dkt. 34-1 at 18-19]. Mr. Liebowitz must also submit a letter by January 15, 2018

confirming that he has complied with this order. Defendants must report back to the Court by January 25, 2018 regarding the results of the forensic review of the emails and metadata.

SO ORDERED.

Date: January 11, 2018
New York, New York


VALERIE CAPRONI
United States District Judge